



In the instant employment discrimination action, seven plaintiffs, including Richard Arrieta, Chris Calip and Roger Johnson (collectively “*Arrieta* plaintiffs” or “*Arrieta* suit”), allege that their employer, Yellow Transportation, violated Title VII of the Civil Rights Act of 1964, (“Title VII”), 42 U.S.C. § 2000e *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. § 1981 (“1981”); and Texas state law. Specifically, the *Arrieta* plaintiffs allege Yellow Transportation discriminated and retaliated against them based upon their race and/or national origin and subjected them to a hostile work environment. Yellow Transportation adamantly denies these allegations.

In a separate but related lawsuit also pending before this Court, Don Wesley, a former Yellow Transportation employee, sued Yellow Transportation pursuant to Title VII and § 1981, alleging race discrimination, retaliation and hostile work environment (“*Wesley* suit”). *See Wesley v. Yellow Transportation, Inc.*, Civil Action No. 3:05-CV-2266 (Fitzwater, J.) (pending in the Northern District of Texas). In the *Wesley* suit, the Court partially granted Yellow Transportation’s motion for summary judgment, and the only claims remaining for trial are Wesley’s hostile work environment claim and disparate treatment claim regarding breaks, work assignments and discipline based on 42 U.S.C. § 1981.

Despite these two pending cases, Yellow Transportation became aware that, on September 29, 2008, Richard Arrieta, Chris Calip, Roger Johnson and Don Wesley filed suit in the Northern District of Texas against their Union and its Local, specifically the International Brotherhood of Teamsters and its Local 745 (collectively, “*Union* plaintiffs” or “*Union* suit”). At present, United States District Judge Reed O’Connor is assigned to the *Union* suit.

In the *Union* suit, the same individuals, who are plaintiffs in the above-referenced *Arrieta* litigation against Yellow Transportation, allege they were subjected to a hostile work

environment because of their race or national origin in violation of § 1981. Notably, the factual allegations lodged by the *Union* plaintiffs regarding their hostile work environment claim are *identical* to and *mirror* the allegations against Yellow Transportation in the *Arrieta* suit. For example, the *Union* plaintiffs allege that both Yellow Transportation and the Union subjected them to, *inter alia*:

- Hangman's nooses displayed and driven on forklifts;
- Offensive writings, graffiti, leaflets, drawings and cartoons;
- Glued locks on lockers;
- Vandalism of personal vehicles;
- Dirty condoms on vehicles;
- Urine and feces on work vehicles or on the workers themselves;
- Racist language and sexually offensive threats or taunts;
- Troublemaker labeling;
- Threats of physical violence; and
- Physical attacks and assaults.

Accordingly, pursuant to Federal Rule of Civil Procedure 42 and as more fully set forth in Yellow Transportation's Brief in Support, Yellow Transportation moves that the *Arrieta* and *Union* suits be consolidated through trial because they involve common parties, common questions of law and fact, there is no risk of prejudice or confusion if they are consolidated, and consolidation will conserve judicial resources by reducing the time and cost of trying to virtually identical suits separately.

Based on the foregoing and as fully set forth in its Brief in Support, Defendant Yellow Transportation, Inc. respectfully requests that the Court grant its Motion to Consolidate Case No.

3:05-CV-2271 with Case No. 3:08-CV-1722 for pre-trial and trial purposes and grant such other and further relief to which it may be entitled.

Respectfully submitted,

/s/ Cathryn L. Blaine by permission  
for Shauna Johnson Clark

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#### **CERTIFICATE OF CONFERENCE**

Counsel for Defendant conferred with Plaintiffs' counsel in both civil actions on November 24, 2008, and both Plaintiffs' counsel are opposed to this motion.

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/s/ Cathryn Blaine  
Cathryn Blaine

**CERTIFICATE OF SERVICE**

Pursuant to the Federal Rules of Civil Procedure, this pleading was served on opposing counsel this 25th day of November, 2008, via the Court's ECF electronic service system and via certified mail return receipt requested.

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